No. 76-476 AND No. 76-465

Supreme Court, U. S.
FILED
JAN 6 1977
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1976

ROBINSON TERMINAL WAREHOUSE CORPORATION, ET AL.,
PETITIONERS

v.

UNITED STATES OF AMERICA

CITY OF ALEXANDRIA, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITIONS FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
Solicitor General,

PETER R. TAFT,
Assistant Attorney General,

JACQUES B. GELIN,
KATHRYN A. OBERLY,
Attorneys,
Department of Justice,
Washington, D.C. 20530.

INDEX

Page

Opinions below 1

Jurisdiction 2

Questions presented 2

Statutes involved 2

Statement 3

Argument 7

Conclusion 10

CITATIONS

Cases:

Cohens v. *Virginia*, 6 Wheat. 264 9

Marine Railway & Coal Co. v. *United States*, 257 U.S. 47 4

Morris v. *United States*, 174 U.S. 196 4

Palmore v. *United States*, 411 U.S. 389 8

Smoot Sand & Gravel Corp. v. *Washington Airport, Inc.*, 283 U.S. 348 4

Statutes and rules:

Act of April 27, 1912, 37 Stat. 93 ..... 2, 3, 4

Section 4 8

Act to retrocede the County of Alexandria, in the District of Columbia, to the State of Virginia, 9 Stat. 35 ..... 2, 3

Section 1 4

Page

Statutes and rules (Continued):

District of Columbia-Commonwealth of Virginia Boundary Act of October 31, 1945, 59 Stat. 552 ..... 2, 3, 4, 5

Section 103 ..... 3, 5, 6, 7, 8

Rule 54(b), Fed. R. C. P. 6

Miscellaneous:

H.R. Rep. No. 595, 79th Cong., 1st Sess. (1945) 5, 8

S. Rep. No. 598, 79th Cong., 1st Sess. (1945) 5

In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-476

ROBINSON TERMINAL WAREHOUSE CORPORATION, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

No. 76-465

CITY OF ALEXANDRIA, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITIONS FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. Ex. A 1-20)[1] is reported at 543 F. 2d 299. The opinion of the district court (Pet. Ex. F) is reported at 386 F. Supp. 1287.

---

[1]Unless otherwise indicated, "Pet. Ex." references are to the exhibits appended to the petition in No. 76-476.

JURISDICTION

The judgment of the court of appeals was entered on July 6, 1976. The petition for a writ of certiorari in No. 76-465 was filed on October 1, 1976, and the petition for a writ of certiorari in No. 76-476 was filed on October 4, 1976. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. The question presented in No. 76-476 is whether Section 103 of the District of Columbia-Commonwealth of Virginia Boundary Act of October 31, 1945, 59 Stat. 552, expressly preserved the jurisdiction of the United States District Court for the District of Columbia to adjudicate a quiet title action instituted by the United States pursuant to the Act of April 27, 1912, 37 Stat. 93, to determine ownership of the land lying between the original District of Columbia-Virginia boundary (the 1791 high water mark on the Virginia side of the Potomac River) and the boundary line established by the 1945 Boundary Act.

2. The question presented in No. 76-465 is whether, in a landlord-tenant dispute between two of the defendants named by the United States in its quiet title action, the alleged landlord's challenge to the district court's jurisdiction to involve itself in the rent dispute is premature, where the district court has not been requested to take any action on the matter and in fact has not done so.

STATUTES INVOLVED

The relevant provisions of the Act to retrocede the County of Alexandria, in the District of Columbia, to the State of Virginia, 9 Stat. 35; the Act of April

27, 1912, 37 Stat. 93; and the District of Columbia-Commonwealth of Virginia Boundary Act of October 31, 1945, 59 Stat. 552, are set forth as Pet. Exs. C, D and E.

STATEMENT

The United States initiated this action in the United States District Court for the District of Columbia, pursuant to the provisions of the Act of April 27, 1912, 37 Stat. 93 (the "1912 Act"), as affirmed by Section 103 of the Act of October 31, 1945, 59 Stat. 552 (the "1945 Act"),[2] to quiet title to submerged and fast lands which have been added to the Alexandria, Virginia, waterfront since January 24, 1791.

As the courts below recognized, this case, both in its present jurisdictional posture and in its substantive aspects regarding title, arose out of the longstanding conflict over the location of the boundary between the District of Columbia and the Commonwealth of Virginia following the 1846 congressional retrocession (9 Stat. 35) of the territory Virginia had ceded to the United States for the

---

[2]For simplicity we refer to the area involved as the Alexandria waterfront. It is specifically described in the United States' complaint as being in "Virginia or the District of Columbia bounded on the south by the north line of the United States Navy pier, as such line extends shoreward, such line being 176 feet 7 inches south of the south line of Gibbon Street and on the north by the south property line of parklands of the United States, such line being approximately 500 feet north of and parallel to the street known as Slater's Lane, and as said boundaries would extend into the River, and on the west by the January 24, 1791, high water mark of the Potomac River, as such lands extend into the River" (Pet. Ex. A 3).

creation of the District of Columbia.[3] The United States contended that, since the retrocession included only those lands which Virginia had ceded in 1791, the boundary between the District of Columbia and the Commonwealth of Virginia became the high water mark on the Virginia side of the Potomac River as of January 24, 1791. Any land, either submerged or fast, riverward of the 1791 high water mark remained in the District of Columbia, and in United States' ownership, since it was part of the Maryland cession to the United States (Pet. Ex. A 3). See, *e.g., Smoot Sand & Gravel Corp.* v. *Washington Airport, Inc.*, 283 U.S. 348, 350; *Marine Railway & Coal Co.* v. *United States*, 257 U.S. 47; *Morris* v. *United States*, 174 U.S. 196.

To clarify and protect the United States' interests in this area, among others, Congress, in 1912, directed the Attorney General of the United States to institute, when he deemed appropriate (37 Stat. 93)—

> * * * suits in the Supreme Court of the District of Columbia [to quiet title to] *any part or parcel of the land or water in the District of Columbia* in, under, and adjacent to the Potomac River * * *

[3]Section 1 of "An Act to retrocede the County of Alexandria, in the District of Columbia, to the State of Virginia," 9 Stat. 35, provides as follows:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled* [italicized in original], That, with the assent of the people of the county and town of Alexandria, to be ascertained as hereinafter prescribed, *all of that portion of the District of Columbia ceded to the United States by the State of Virginia, and all the rights and jurisdiction therewith ceded over the same, be, and the same are hereby, ceded and forever relinquished to the state of Virginia*, in full and absolute right and jurisdiction, as well of soil as of persons residing or to reside thereon. [Emphasis added.]

> *including the shores and submerged or partly submerged land*, as well as the beds of said waterways, and also the upland immediately adjacent thereto, *including made lands*, flats, and marsh lands. [Emphasis added.]

No general action to adjudicate title to the land lying within the Alexandria waterfront area, however, was initiated until the United States filed the instant action on December 21, 1973 (Pet. Ex. A 7).

In the interim period, the Alexandria waterfront was extended further and further into the Potomac River and jurisdictional uncertainties increasingly hampered law enforcement along the shoreline. To alleviate these jurisdictional uncertainties, Congress, at the urging of the Attorney General, enacted the Act of October 31, 1945, 59 Stat. 552, to "establish a definite clear-cut boundary line, easy to recognize and convenient for police and court jurisdiction" (H.R. Rep. No. 595, 79th Cong., 1st Sess. 1 (1945); S. Rep. No. 598, 79th Cong., 1st Sess. 1 (1945)). This statute established the new jurisdictional boundary along the Alexandria waterfront at the pierhead line, by ceding concurrent jurisdiction to the Commonwealth of Virginia over all lands situated between the pierhead line and the mean high water mark of 1791.

Section 103 of the 1945 Act, however, expressly provided as follows:

> Sec. 103. Nothing in this Act shall be construed as relinquishing any right, title, or interest of the United States to the lands lying between the mean high-water mark as it existed January 24, 1791, and the [pierhead line]; or to limit the right of the United States to establish its title to any of said lands as provided by Act of Congress of April 27, 1912 (37 Stat. 93); or the jurisdiction of the courts

> of the United States for the District of Columbia to hear and determine suits to establish the title of the United States in all lands in the bed, marshes and lowlands of the Potomac River, and other lands as described by said Act below the mean high-water mark of January 24, 1791 * * * .

The United States took the position, through this action, that this language expressly preserved the exclusive jurisdiction of the United States District Court for the District of Columbia to adjudicate title to the lands along the Alexandria waterfront. Petitioners, however, sought dismissal of the action on the ground that such an action could only be maintained in the United States District Court for the Eastern District of Virginia. The district court agreed with petitioners and, on January 29, 1975, dismissed the action against 30 of the 36 named defendants (Pet. Ex. A 3).[4]

On appeal, the court of appeals reversed, holding that Section 103 of the 1945 Act expressly preserved the jurisdiction of the United States District Court for the District of Columbia to adjudicate actions brought by the United States to quiet title to lands along the Alexandria waterfront (*ibid.*) Accordingly, the court remanded for a trial on the merits. Petitioners in No. 76-476 challenge this ruling.

---

[4]The district court dismissed those defendants claiming ownership of land shoreward of the pierhead line between Gibbon Street on the south and Second Street on the north in the City of Alexandria. The district court retained jurisdiction over the six defendants claiming ownership of parcels lying between Third Street and Slater's Lane since the court found a dispute about whether this land was in the District of Columbia or in the Commonwealth of Virginia. 386 F. Supp. 1287, 1290. The district court's order of dismissal included a certification under Rule 54(b), Fed. R. Civ. P., to permit immediate appellate review.

The City of Alexandria, petitioner in No. 76-465, raises a matter ancillary to the court of appeals' jurisdictional decision. During the pendency of this action, a rent dispute arose between the City and Old Town Yacht Basin, Inc., both of whom are defendants in the quiet title action. On Old Town's motion, and with the support of the United States, the court of appeals issued an injunction on March 26, 1976, prohibiting the City from taking any action to remove Old Town from the premises it now occupies, on condition that Old Town pay the City a monthly rental of $300.00, to be maintained by the City in a separate account (No. 76-465 Pet. Ex. H). The court of appeals' decision provided that this injunction would be vacated upon issuance of the mandate and the matter remanded to the district court along with the rest of the case (Pet. Ex. A). In its petition, the City challenges the remand of this landlord-tenant dispute to the district court (No. 76-465 Pet. 3).

ARGUMENT

The decision of the court of appeals is correct, the issues involved here are not of general importance, and there is no reason for review by this Court.

1. The language employed by Congress in Section 103 of the 1945 Act demonstrates a clear intention to preserve the jurisdiction of the United States District Court for the District of Columbia in actions to quiet title to lands lying riverward of the 1791 high water mark. Petitioners' contrary contention—that Section 103 merely preserved jurisdiction over actions involving lands to the District of Columbia side of the new pierhead—can be reconciled neither with the language of Section 103 nor the legislative history of the 1945 Act, which make clear that this statute was enacted only to create "a definite, clear-cut boundary line, easy to recognize and convenient for police and court jurisdiction, between the District of Columbia and the Commonwealth of Virginia"

and "establish[ ] definitely the Federal courts in which *all criminal offenses will be tried*" (emphasis added). H.R. Rep. No. 595, *supra*, 1-2. While the statute settled criminal court and police jurisdiction in this area, however, Congress in Section 103 specifically disclaimed any intent to affect either the United States' title to lands riverward of the 1791 mean high water mark or the jurisdiction of the United States District Court for the District of Columbia, in which court the Attorney General was directed to initiate quiet title actions by the 1912 Act.[5] Petitioners' interpretation, which renders Section 103 mere surplusage, was properly rejected by the court of appeals.[6]

2. Although petitioners argue that the decision of the court of appeals gives the district court authority over lands lying outside its jurisdiction, the jurisdiction of the lower federal courts is determined by Congress. *E.g., Palmore* v. *United States*, 411 U.S. 389, 401, and cases cited therein. While petitioners therefore may be correct that the United States District Court for the District of

---

[5]Significantly, Section 4 of the 1912 Act directs the United States District Court for the District of Columbia to determine the value of any valid right, title, or interest in the land or water area in dispute held by any adverse claimant. Once these tasks are completed, the United States District Court for the District of Columbia—not the Eastern District of Virginia—is to prepare and submit a report to Congress. Petitioners' arguments would thus vitiate what is essentially a congressional reference statute directed toward a particular court.

[6]The same district judge who dismissed the instant action agreed, in an earlier unreported memorandum opinion, that petitioners' argument violates this basic rule of statutory construction. *United States* v. *Robinson Terminal Warehouse, Inc.*, Civil No. 1903-73 (D. D.C.). As the court of appeals noted (Pet. Ex. A 19, n. 32), it is "difficult to reconcile" the correct statement of the law in *Robinson Terminal* with the same judge's complete *volte-face* in this action.

Columbia may not generally entertain *in rem* actions involving lands located outside of the District, that argument is beside the point when Congress has expressly given the court such jurisdiction.

Similarly, petitioners' charge that the district court's potential ancillary involvement in questions of Virginia landlord-tenant law will result in an "administrative nightmare" (Pet. 14), if accurate, is an argument more properly addressed to Congress than to this Court. As the court of appeals recognized (Pet. Ex. A 19-20), "federal tribunals are not free to pick and choose among the various functions assigned to them by Congress." See *Cohens* v. *Virginia*, 6 Wheat. 264, 404.

3. We take no position on the merits of the rent dispute between the City of Alexandria and Old Town Yacht Basin, Inc.[7] We believe, however, that the City's challenge to the district court's jurisdiction over the matter is premature. As noted, the court of appeals' injunction was vacated on July 28, 1976, when the madate was issued. "At that time the matter [was placed] in the hands of the District Court." Pet. Ex. A 19, n. 33. The court of appeals did not direct the district court to enter a similar injunction or in any other manner indicate the course of action to be followed by the district court on remand. To date, the district court has not taken *any* action on the rent dispute, nor has it been requested to do so by any party. We submit that the City's challenge to the district

---

[7]However, we note here, as we did in the courts below, that the resolution of that underlying title dispute will take some time. In our view, neither the City nor Old Town should be unfairly injured during the pendency of the litigation. For this reason we suggested that the court of appeals might properly exercise its equitable powers to preserve the status quo, by issuing an injunction against eviction conditioned upon the payment of rent by Old Town into an escrow account.

court's jurisdiction should first be presented to that court if and when Old Town Yacht Basin seeks relief. The present posture of the matter renders it inappropriate for review by this Court.

CONCLUSION

For the foregoing reasons, the petitions for writs of certiorari should be denied.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

PETER R. TAFT,
Assistant Attorney General.

JACQUES B. GELIN,
KATHRYN A. OBERLY,
Attorneys.
Department of Justice.

JANUARY 1977.

DOJ-1977-01

see

476

476